

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to execute License Agreement between the City of Lowell ("City") and LD Holdings, LLC d/b/a Bar 74, for use of a portion of City property adjacent to the premises at 76 Merrimack Street, Lowell, for the purpose of sidewalk seating.

LD Holdings LLC d/b/a Bar 74, desires to use a portion of City property, adjacent to the premises at 76 Merrimack Street, Lowell, for the purpose of sidewalk seating; and

On May 9, 2000 an Ordinance was adopted by the City Council which added Section 17-29 entitled "Sidewalk Seating", establishing certain regulations for seasonal temporary sidewalk seating appurtenant and contiguous to a restaurant facility; and

On December 23, 2008 the City Council amended the Code and Section 17-29 entitled "Sidewalk Seating" is now referenced as Section 243-23; and

The CITY desires to support the efforts of the LD Holdings LLC d/b/a Bar 74, in its endeavor to assist in stimulation of the downtown area;

BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

The City Manager is hereby authorized to execute a License Agreement between the City of Lowell ("City") and LD Holdings LLC d/b/a Bar 74, for use of a portion of City property adjacent to the premises at 76 Merrimack Street, Lowell, for the purpose of sidewalk seating.

Said License shall be predicated upon adequate insurance coverage which coverage shall be kept in force so long as the License Agreement continues under this License. In the event that

said insurance coverage shall be cancelled or lapses without being renewed or replaced, then said License hereunder shall be forthwith terminated and Licensee shall have to cease and desist.

Said License shall be in accordance with the form, or substantially the form, attached hereto.

V:licagree/merrimack76

LICENSE AGREEMENT

THIS LICENSE, made at Lowell, Middlesex County, Massachusetts, between the CITY OF LOWELL, MA, hereinafter called "Licensor," and LD Holdings LLC d/b/a Bar 74, with a business operation at 77 Merrimack Street, Lowell, MA 01852 hereinafter called "Licensee," for use of City property for the purpose of sidewalk seating adjacent to the premises at 76 Merrimack Street, Lowell, MA pursuant to Section 243-23 of the "Code of the City of Lowell, Massachusetts" entitled "Sidewalk Seating".

WITNESSETH THAT:

The Licensor hereby grants to the Licensee a license to encroach upon and use City of Lowell property located adjacent to the property at 76 Merrimack Street, Lowell, Massachusetts to the extent of, and more particularly shown in Exhibit "A" attached hereto and made a part of this License Agreement for the purpose of an outdoor seating area for LD Holdings LLC d/b/a Bar 74, and for no other purpose.

IT IS FURTHER AGREED that this is a License only, the Licensee shall, at all times, maintain liability insurance policies in the amount of \$500,000.00 on the premises and agrees hereby to hold the City harmless from any and all injuries to persons or property resulting from said encroachment under this License or from the use, direct or indirect of the City property, by the Licensee or invitees of the Licensee. The City shall be named as an additional insured of said policy to the extent of its interest therein.

If said insurance policy is cancelled or lapses without being forthwith renewed, then said License granted hereunder shall be forthwith terminated and the Licensee shall have to cease and desist from said use of the property. Evidence of said insurance shall, at all times, be sent to the Department of Planning and Development of the City of Lowell.

Said License shall be predicated upon and shall not be in effect until adequate insurance coverage, satisfactory to the Licensor, naming the Licensor as an insured party, which coverage shall be kept in force so long as said use of the premises continues under this License.

This License Agreement is conditioned upon the Licensee's possessing and retaining any required licenses from the City of Lowell License Commission and the Board of Appeals relative to use of the licensed area as sidewalk seating.

The Licensee agrees that the entire seating area may not extend beyond the boundaries of the licensee's business.

The Licensee agrees that the entire seating area and its appurtenances including but not limited to chairs, table, fencing, bollards and planters need to be fully approved by the Department of Planning and Development.

The Licensee shall comply with the requirements of the American's with Disabilities Act of 1990, as amended, including maintaining at least a four foot (4') wide unobstructed sidewalk passageway for pedestrian traffic at all times.

The Licensee shall pay all costs of utilities it incurs during its use of the premises.

The Licensee agrees that the seating area must be separated from pedestrian walk space with a non-moveable system of enclosure, such as decorative fencing with removable bollards.

The Licensee shall bear all financial responsibility for any and all the improvements necessary to the public space both within and surrounding the sidewalk seating area including any material separating the sidewalk from the premises.

The Licensee shall clean the area on a daily early morning basis, removing all trash, including discarded smoking materials.

The Licensee agrees that the sidewalk seating area must serve food. No one shall be seated in a sidewalk seating area for the sole purpose of drinking alcohol. The hours of operation of those establishments licensed to sell alcoholic beverages shall be determined by the License Commission of the City of Lowell and will be incorporated into the license agreement for the use of the sidewalk.

The Licensor reserves the right to require the Licensee to remove the seating if and when it determines it to be necessary, for any reason at any time.

The Licensee hereby releases and agrees to indemnify and hold harmless the Licensor, its agents, officers, servants and employees from any and all claims, demands and liabilities, including attorney's fees, whatsoever from any and all claims of damage or injury to persons or property which might occur on account of the use by the Licensee of property located adjacent to property at 76 Merrimack Street, Lowell, Massachusetts.

Inherent in this License Agreement is the unilateral right of the Licensors to cancel this license at any time upon written notice thereof to the Licensee.

The Licensee shall pay for the cost of recording this License at the Middlesex North District Registry of Deeds.

It is understood and agreed that this License does not grant any ownership interest to the Licensee in the licensed area.

This License Agreement is issued under the authority of and in accordance with a Vote of the City Council of Lowell on this subject dated July 9, 2019, and is subject to all terms and provisions of said Section 243-23 of the Code of the City of Lowell entitled "Sidewalk Seating" and Section 204-3 (E) entitled "Outdoor Places of Public Entertainment". The Licensee acknowledges receipt of copies of both Ordinances and agrees to be bound by same.

Signed and sealed this _____ of _____, 2019.

LD Holdings LLC d/b/a Bar 74

Witness

By: _____
Lauren DiSalvo

APPROVED AS TO FORM

CITY OF LOWELL

Christine P. O'Connor
City Solicitor

Eileen M. Donoghue
City Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 2019, before me the undersigned Notary Public, personally appeared Eileen M. Donoghue, City Manager, proved to me through satisfactory evidence of identification, which was Notary's personal knowledge of the individual, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

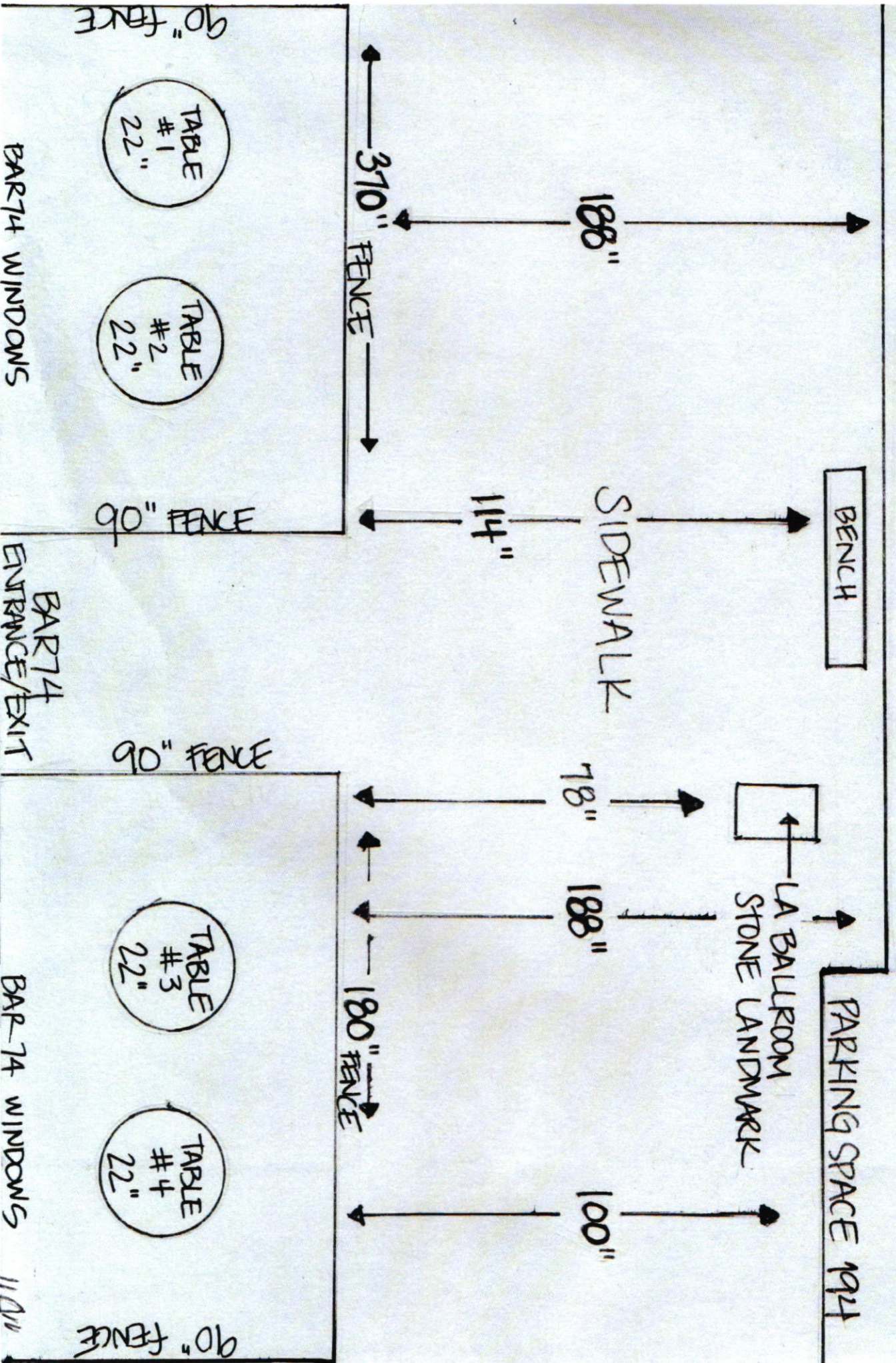
_____, Notary Public

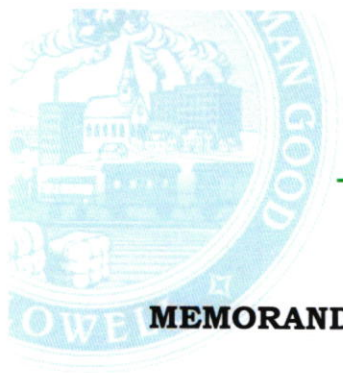
My commission expires:

BAR74
70MERPRIMACK ST.
LOWELL MA 01852
JUNE 2019

MERRIMACK STREET

*NOT DRAWN TO SCALE





Eileen M. Donoghue
City Manager

MEMORANDUM

TO: Eileen M. Donoghue, City Manager
FROM: Christine McCall, Senior Planner
DATE: July 2, 2019
SUBJECT: Sidewalk Seating License Agreement

A complete sidewalk seating application was submitted by Lauren DiSalvo, LD Holdings, LLC on Monday, June 24, 2019 for use of the City right-of-way in front of Bar 74 located at 76 Merrimack Street. Various City Departments reviewed the sidewalk seating application and had the following concerns:

1. The Lowell License Commission will have to hold a public hearing for Bar 74 for sale and consumption of alcohol beverages in the sidewalk seating area. The earliest public hearing date for Bar 74 will be July 25th. Abutters have to be notified, after publication of legal notice [July 12th]. The application would then have to be approved by the A.B.C.C.
2. There is an issue with the existing hood system. One of the conditions of their Certificate of Inspection is that Bar 74 would be serving only food prepared in a crock pot. Bar 74 will need to demonstrate that the hood system has been corrected and inspected. The proposed menu requires a functioning hood system given the presence of fried food listed.
3. There is a concern that the proposed tables and chairs will disappear and the sidewalk seating area will become an extension of the night club. It is recommended that overall capacity should be limited to the number of seats they have around the tables and be stated on all permits. This will eliminate any late night confusion and allow for enforcement by Police and Fire and portray an orderly environment.
4. Last summer, the prior Superintendent of the Lowell Police Department raised concerns about the issuance of a sidewalk seating license. See attached.

Should the council wish to move forward and allow you to enter into a license agreement with LD Holdings, LLC a/b/a Bar 74 attached is a Vote to authorize.

This Vote will authorize the use of City property for the purpose of sidewalk seating adjacent to the premises at 76 Merrimack Street, Lowell MA.